1987

# County Board of Equalization of Salt Lake County, State of Utah v. State Tax Commission of Utah and Kennecott Corporation : Brief of Petitioner

Utah Supreme Court



James B. Lee, Kent W. Winterhollder; Parsons, Behle and Latimer; David Wilkinson; Attorney General of Utah; Maxwell A. Miller; Assistant Attorney General; Glen E. Davies; Attorney for Respondent.

David E. Yocom; Salt Lake County Attorney; Bill Thomas Peters; Attorneys for Petitioner.

IN THE SUPREME COURT

OF THE STATE OF UTAH

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| COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, | : | Case No. 87-0368 |
| Petitioner, | : | |
| -vs- | : | Priority Category 14-a |
| STATE TAX COMMISSION OF UTAH, ex rel, KENNECOTT CORPORATION, | : | |
| Respondent. | : | |

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# BRIEF OF PETITIONER, COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH

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APPEAL FROM THE DECISION OF THE UTAH STATE TAX COMMISSION ISSUED SEPTEMBER 10, 1987

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## JURISDICTION

Jurisdiction to the Supreme Court in this matter is found in Section 78-2-2-2(3)(3)(ii), Utah Code Annotated, 1953, as amended. Pursuant to Rule 14, Rules of the Utah Supreme Court, Petition for Writ of Review from the final decision of the above-referenced matter of the Tax Commission of Utah: R.H. Hansen, Chairman, has been properly filed within the time required by Rule 14(a) of the Rules of the Utah Supreme Court. No other claims remain to be determined in these proceedings and appeal is taken to this Court.

## STATEMENT OF NATURE OF PROCEEDINGS BELOW

This appeal is from the Formal Decision of the State Tax Commission of Utah wherein said Commission granted a property tax preference to Kennecott Corporation and reduced the value of 3,990 acres of property owned by Kennecott to its value for agricultural purposes. The property was leased to Hercules, Inc., for a buffer zone around its manufacturing plant and was also leased for grazing and for the growing of red winter wheat. The Tax Commission decision was issued on September 10, 1987. Petition for Writ of Review was filed by appellant, Salt Lake County, on October 8, 1987. Writ of Review was issued by the Supreme Court on October 8, 1987.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether or not the use of the subject property in the

manner set forth in the lease between Kennecott Corporation and Hercules Corporation in conjunction with its rocket and munitions manufacturing plant and used as a buffer zone with regard to said plant, allows said property to be assessed as agricultural property by virtue of the fact that said property is also leased for use as grazing and ground to grow red winter wheat.

2. Whether or not assessment of property under the Farmland Assessment Act is a limited tax exemption and should be narrowly construed.

3. Whether or not Utah Code Annotated Section 59-13-73 (now 59-4-101) Utah Code Annotated, 1953, as amended, 1987, is applicable if the Tax Commission assessment as farmland is affirmed.

## STATEMENT OF THE CASE

Petitioner, Salt Lake County, during tax year 1985, assessed the property that is the subject matter of this appeal. Subject property consists of approximately 3,990 acres surrounding a munitions and rocket motor manufacturing plant being constructed by Hercules. The subject property is leased to Hercules by Kennecott as a buffer zone, required by Federal and State law. Of that acreage, Petitioner also leases approximately 1,500 acres to Don Rushton who grows red winter wheat on the property, and leases the remainder of the subject property plus several thousand other acres to Johnson Cattle Company, which

raises cattle on the property. The Salt Lake County Board of Equalization determined that the property that was leased to Hercules Corporation and used in conjunction with the munitions manufacturing and rocket motor manufacturing facility was not subject to assessment under the Farmland Assessment Act, but was rather subject to assessment at fair market value as is all other tangible property located within the State of Utah. Thereafter, Kennecott Corporation filed a Notice of Appeal to the Utah State Tax Commission. The Utah State Tax Commission, on the 3rd day of September, 1986, issued an informal decision wherein it determined that the subject land was actively devoted to agricultural use including the grazing of beef cattle and the growing of grain crops, and that as such, the land was subject to valuation under the Farmland Assessment Act, pursuant to Section 59-5-90, Utah Code Annotated, 1953, as amended. The Commission further determined that Hercules' rights to the subject property, under its lease with Kennecott, and the use thereof by Hercules did not preclude assessment of the subject property under the provisions of the Farmland Assessment Act. Petitioner, Salt Lake County, filed a Petition for a Formal Hearing, which hearing was held on the 30th of December, 1986. Thereafter, on the 10th day of September, 1987, the Utah State Tax Commission issued its Formal Decision determining that the subject property should be valued as land qualifying for assessment under the Farmland Assessment Act, and directed the Salt

Lake County Assessor to assess the property devoted to agricultural use and to continue assessing said property under the Farmland Assessment Act until and unless the subject property fails to meet any of the requirements of the Act. Petitioner thereafter filed a Petition for a Writ of Review which Petition and Writ were filed and issued on the 8th day of October, 1987.

## STATEMENT OF FACTS

The property that is the subject of this appeal is located in Salt Lake County, Utah, and owned by Kennecott Corporation and leased to Hercules, Inc.

The subject property consists of approximately 3,990 acres surrounding a manufacturing plant constructed by Hercules, Inc., where products such as rocket fuels and motors are manufactured and where experiments may occur on other potentially explosive materials. (T-605-642). Because of the dangerous and potentially explosive activities which are carried on at the Hercules facility, federal, state and local laws require a buffer zone around the Hercules facility where there may be no other human habitation or human activities because of the potential risk to human life and safety. (T-359-541). Therefore, Hercules, Inc., has entered into a 25 year lease of the Kennecott property to provide the required buffer zone. (T-605-642). In addition, Kennecott has also leased portions of the same property to two separate farmers, Johnson and Rushton,

on two separate agricultural leases. (T-346-353) and (T-587-590). One for grazing and the other for the growing of red winter wheat. A comparison of the relevant provisions of the three leases is as follows:

| | RUSHTON LEASE | JOHNSON LEASE | HERCULES LEASE |
|---|---|---|---|
| Term of Lease: | 1 year | 1 year | 25 years |
| Renewal Options: | 1 year | 1 year | 15 years |
| Renewal at Option of: | Kennecott | Kennecott | Hercules |
| Total Term which Lessee Can Mandate: | 1 year | 1 year | 40 years |
| Right of First Refusal: | No | No | Yes |
| Annual Lease Agreement: | 25% of Gross | $4,500. | $239,640.* |
| Termination Notice by Lessor: | 30 days | 30 days | None for 40 years |

* Plus annual adjustment based upon fluctuations in GNPPD.

Additionally, Hercules' rights under its lease with Kennecott entitles Hercules the right to prevent Kennecott from leasing or selling the property to a party who would build a habitable structure on the property. (T-623-624).

The Tax Commission, on the 10th day of September, 1987, issued its formal decision and determined that the subject property was land qualified to be assessed under the Farmland Assessment Act, as property devoted to agricultural use. The Commission further directed the Salt Lake County Assessor to assess the property as property devoted to agricultural use, and

to continue assessing the property under the Farmland Assessment Act until and unless the subject property fails to meet any of the qualifications under the Farmland Assessment Act. (T-44-52).

Petitioner, Salt Lake County filed its petition for a Writ of Review on the 8th day of October, 1987. (T-4-7). Said Writ of Review was duly issued to the Clerk of this Court on October 8, 1987. (T-1-3).

## SUMMARY OF ARGUMENTS

The property owned by Kennecott Corporation and leased to Hercules Corporation to facilitate the manufacturing of rocket motors, fuels, and munitions, and upon which experiments may occur on other potentially explosive materials which, by Federal, State and local law is required to be maintained as a buffer zone where there may be no other human habitation or human activities because of the potential risk to human life and safety, is not property qualified for preferential tax treatment afforded under the Farmland Assessment Act which requires, as a condition of such treatment that such property be "actively devoted to agricultural use." Therefore, said property should be denied preferential tax assessment and should bear its fair share of the tax burden and be assessed in the same manner as other taxable property located within Salt Lake County. And, to

the extent the value and tax is exempted, the users thereof should pay the privilege tax therefore.

## ARGUMENT

### POINT I

### THE APPROXIMATELY 4000 ACRES OF LAND LEASED BY KENNECOTT TO HERCULES, INC., IS NOT "LAND WHICH IS ACTIVELY DEVOTED TO AGRICULTURAL USE" WITHIN THE MEANING OF THE UTAH FARMLAND ASSESSMENT ACT.

Section 59-5-89 (now 59-2-503), Utah Code Annotated, 1953, as amended, reads, in part, as follows:

> "Value of Land actively devoted to agricultural use. (1) For general property tax purposes and land subject to the privilege tax imposed by section 59-13-73 owned by the state or any political subdivision thereof, the value of land, not less than five contiguous acres in area, unless otherwise provided under subsection (2), which has a gross income, not including rental income, of $1000 per year, is actively devoted to agricultural use, which has been so devoted for at least two successive years immediately preceding the tax year in issue, shall, on application of that owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural use. (Emphasis supplied.)

However, as a threshold requirement, the land for which the preferential tax treatment is sought must be "actively devoted to agricultural use." (Emphasis supplied.) Appellants assert that the Kennecott-Hercules rocket and explosives buffer zone that is the subject of this appeal fails to meet this threshold requirement.

This is a case of first impression in that there are no other Utah cases that have interpreted the statutory language of "actively devoted to agricultural use."

Webster's Ninth New Collegiate Dictionary defines "devoted" as, "To commit by solemn act," or "to give over or direct to a cause, enterprise or activity." It lists the words "dedicate" and "consecrate" as synonyms and then indicates that the word "Dedicate" implies solemn and exclusive devotion to a sacred or serious use or purpose. (Emphasis supplied.) It is therefore respectfully submitted that the phrase "actively devoted for agricultural use" as used by the Utah State Legislature signifies an intent on the part of the Legislature to require that the tax preference be extended only to those lands that are used nearly exclusively for agricultural purposes. A de minimus non-agricultural use should not disqualify the property from the preferential treatment. The facts in this case clearly demonstrate that the non-agricultural use is dominant rather than de minimus. The use of the property in this case is as a buffer zone for the Hercules rocket manufacturing facility and related Hercules activities. Its primary or dominant or exclusive use is industrial. To build its plant, Hercules needed a buffer zone. Its plant could not exist without it. Federal, state and local laws would not allow the plant to exist without the buffer zone. The use is demonstrated by the lease comparison set forth in the statement of facts.

The rents received from the Rushton and Johnson agricultural leases are less than five (5) percent of the rents received for the Hercules industrial lease. Rushton's rent is twenty-five (25) percent of gross production of red winter wheat. Rent from the Johnson lease is $4,500. per year. The Hercules lease base rent is $239,640. per year. Hercules annual base rent is 5,333% higher than the rent received on the Johnson lease. The base rent of the Hercules lease is adjusted each July based upon fluctuations in the Gross National Product Price Deflation over the base year of 1982. In addition, Hercules pays all taxes and assessments upon the property. The length of time that the agricultural leases can be mandated is less than three (3) percent of the time that the Hercules industrial lease can be mandated.

The lessor, Kennecott Corporation, can terminate the Johnson lease upon thirty (30) days notice. Kennecott Corporation can terminate the Rushton lease upon thirty (30) days written notice. Kennecott cannot terminate the Hercules Industrial lease for forty (40) years. The Johnson and Rushton leases are renewable each year only if Kennecott is willing to renew them. On the other hand, Kennecott must renew the Hercules industrial lease for forty (40) years if Hercules elects to renew it. Given the above facts, it is clear that the subject property is actively devoted to an industrial use rather than an agricultural use.

This Court in Loyal Order of Moose, #259 -vs- County Board of Equalization of Salt Lake County, 657 P.2d (Utah 1982), addressed the issue of whether certain property owned by the Moose Lodge in Salt Lake City was used exclusively for charitable purposes. In denying the exemption, the Court made the following significant statements which are equally applicable to this case. The Court therein at page 263 stated:

> "We see wisdom in a rule which does not deny a tax exemption to property which is used for charitable purposes simply because there is a de minimus non-charitable use. The exemption need not be interpreted as the law of the Medes and Persians. The intent of Section 2, Article XIII to encourage charity is preserved where inadvertent or extremely minor non-charitable uses of property do not foreclose an exemption. However, where the non-charitable use rises to the level that it must be weighed against charitable use in order to determine which use is dominant, then clearly the non-charitable use is well beyond the point of de minimus and should unquestionably preclude an exemption. (Emphasis added.)

On page 264 of that case the Court continued:

> The constitutional exemption is to be strictly construed and the charitable use of the property must be exclusive; however, a use of true minor import or a de minimus use will not defeat an exemption. If there is any separate part of the building occupied and used exclusively for charitable purposes, that part qualified for exemption. (Emphasis added.)

**********

> Therefore, under the rule that the charitable use must be exclusive (previously explained in Part III of this option), whether the non-charitable use was primary or not primary is not the test. Clearly, the non-charitable use was not de minimus and the property does not qualify for an exemption. (Emphasis added.)

While it might be argued that the constitutional requirement of "used exclusively for" is narrower than the statutory requirement of being "actively devoted to agricultural use." the same reasoning is applicable. An exemption from taxation or a substantial reduction such as given for agricultural use is a tax preference. The rules requiring strict and narrow construction of tax exemption statutes should be equally applicable to a substantial reduction in tax burden. Both reduce government revenues and both result in an increased burden upon the already over-burdened taxpayers. To qualify for preferential assessment as agricultural land, the land must be "actively devoted to agricultural use." This would allow a de minimus non-agricultural use to occur without endangering the tax preference so long as the agricultural use was primary, dominant or nearly exclusive. Under this test, the Kennecott property leased to Hercules does not qualify. At best, the agricultural use is de minimus or secondary. Its dominate or devoted use is industrial. To impose a requirement that the agricultural use of property must be primary, dominant or nearly exclusive is consistent with the Utah cases dealing with property tax exemptions extended to religious and charitable properties under the Utah Constitution. These exemptions are strictly construed in favor of taxation and against exemption. See Utah County v. Intermountain Health Care, 709 P.2d 265 (Utah 1985). It is also consistent with the position taken earlier by

the Utah State Tax Commission in Judd v. County Board of Equalization of Salt Lake County, Decision of Informal Hearing, Appeals No. 85-1738 thru 85-1750, decided April 2, 1986, appended hereto as Addendum 2, wherein the Commission on page 3 thereof, ruled in part as follows:

> "Once property has been severed, subdivided, and improvements placed thereon, the greenbelt status should be removed and roll-back taxes assessed according to statute because the primary purpose of the ground is no longer for agricultural use, but for resale." (Emphasis supplied.)

The primary purpose of the ground used by Hercules, Inc., and leased from Kennecott is industrial. It is a buffer zone. Additionally, this reasoning is consistent with the decisions of other courts confronting the interpretation of similar language in statutes.

In the case of Rushton Hospital, Inc., -vs- Riser, 191 So. 2d 665, (La. 1966), the Louisiana Constitution exempted from taxation "places devoted to charitable undertakings." The Louisiana Court of Appeals held that it was the use of the property that constituted the test, and that the term "devoted to" connotates a setting apart, a dedication. Based upon the constitutional requirement of "devoted to" the Court held that:

> "There must be evidence which establishes the fact that the operation and use of the undertaking is devoted exclusively to the performance of charitable acts." (Emphasis added.)

In the case of Otis Lodge, Inc., -vs- Commissioner of Taxation, 206 N.W. 2d 3, (Minn. 1972), the Minnesota Supreme

Court dealt with a statute that taxes property at a lower rate (Class 3) if it was "devoted to temporary and seasonal residential occupancy for recreational purposes." The court therein, at page 7, stated:

> "Perhaps some attention should be given to the use of the word "devoted" in the phrase we are interpreting. Does it mean, as used here, given "wholly and completely" or "chiefly" to "seasonal residential occupancy for recreational purposes?" Suppose the owner of a non-commercial cottage uses it between seasons for a few weekends to "get away from it all" and not because of any particular recreational activity that could be termed seasonal. Should this minimum use be grounds for denying that owner's real estate a class 3 status? We think that the word "devoted means chiefly and not wholly because we don't think the legislature intended an absurd result. Furthermore, the phrase "devoted to" clearly means the use to which it is actually put, not the use or uses to which the property may be put. (Emphasis added.)

In another Minnesota case involving the same statute that was involved in the Otis Lodge case, supra, Wolf Lake Camp, Inc., v. County of Itasca, 252 N.W. 2d 261, (Minn. 1977), the Minnesota Supreme Court held that under the statute using the term "devoted to" "the actual use of the real property must be chiefly for" the use to which it must be devoted under the statute. The reasoning in Otis has been cited with approval by the United States Court of Appeals for the Ninth Circuit in Complaint of McLinn, 744 F.2d 677 (C.A. 9th 1984). See also, Helgeson v. County of Hennepin, 387 N.W.2d 408 (Minn. 1986).

The most comparable case is City of East Orange v. Township of Livingston, 246 A. 2d 178, (N.J. 1968), where the Superior Court of New Jersey was faced with a Farmland

Assessment statute nearly identical to the Utah statute. The New Jersey statutes were part of their Farmland Assessment Act of 1964, and provided as follows:

> "For general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use which has been so devoted for at lease the two successive years immediately preceding the tax year in issue, shall, on application of the owner, the approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural use." N.J.S.A. 54:4-23.2 (Emphasis added.)
>
> "Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government." N.J.S.A. 54:4-23.3
>
> Land shall be deemed to be actively devoted to agricultural or horticultural use when the gross sales of agricultural or horticultural products produced thereon together with any payments received under a soil conservation program have averaged at least $500.00 per year during the 2-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least $500.00 within a reasonable period of time." N.J.S.A 54:4-23.5

The land in question in that case was used primarily as a Water Reserve and secondarily as agricultural property. The contention of the property owner was:

> The water Reserve is said to be "in agricultural use" within the meaning of the act because it consists of

pastureland and is used for the growing and sale of hay, timber and cordwood from which East Orange derives an annual income in excess of the statutory minimum. It also is asserted tangentially that the Water Reserve is entitled to farmland assessment because it is under a federal soil conservation program.

The Court therein stated that:

"The purpose of [The Farmland Assessment Act of 1964] was to counter the adverse impact of property taxation upon agriculture and to provide farmers with some measure of tax relief."

Further, at page 189-190:

It was apparent that the main objective of the proposed amendment was to enable and encourage farmers to continue to farm their land in the face of dwindling farm incomes and mounting costs, not the least of which was sharply increasing real estate taxes. Senate Committee on Revision and Amendment of Laws, Public Hearing, "Senate Concurrent Resolution No. 16, etc." (April 15, 1963). There were also other incidental, beneficent purposes anticipated by its proponents, such as fostering agriculture in the State for the good of the general economy, ameliorating problems of urban growth in rural municipalities, and encouraging the preservation of open spaces. Id., pp. 5, 11-13, 16, 33-35. But, as noted, the primary objective was to save the "family farm" and to provide farmers with some economic relief by permitting farmlands to be taxed upon their value as on-going farms and not on any other basis.

The relevant portions of the holding are then stated at page 191 of the decision, wherein it is stated:

Moreover, even if a municipal watershed were within the ambit of the Farmland Assessment Act of 1964, the agricultural activities undertaken on the East Orange Water Reserve would not qualify these lands for taxation as farmlands. The pointed inquiry on this hypothesis is whether, by virtue of the activities relating to the sales of hay, timber and cordwood, it can be said that the East Orange Water Reserve is "actively devoted" to "agricultural use" within the meaning of N.J.S.A. 54:4-23.5. Even though

the agricultural use is "active" in the literal sense that East Orange has realized income in excess of $500 per annum for the past two years from the sale of timber, cordwood and hay (N.J.S.A. 54:4-23.5), compliance with this single criterion does not per se render the Water reserve as land "devoted" to agricultural use. To be "in agricultural use" under the act, land must actually be "devoted to the production for sale of plants * * * useful to man, including but not limited to * * * trees and forest products * * *.." It may be accepted that trees and forest products are a derivative of the East Orange Water Reserve. It does not follow therefrom that the East Orange Water Reserve is devoted to the production for sale of its trees and forest products.

* * * * *

In brief, the term "devote" must be understood in its usual significance and in a manner which will sensibly effectuate the salient statutory objective of providing tax relief with respect to lands committed to farming.

The verb "devote" denotes variously "1, * * * to set apart or dedicate by a solemn act; to consecrate; * * * 2. to give up wholly; to addict; to direct the attention of wholly or chiefly." A synonym is "to set apart" or "to appropriate," An equivalent verb is "to dedicate," Webster's New International Dictionary (1948 ed.), 715.

All of the experts recognize that there can be multiple uses of woodlands or forests, which could include or combine the production of water, wood, recreation, education and the like. Depending upon the particular lands involved, one use tends to become dominant. The principal use of the East Orange Water Reserve is a watershed. Any commercial gain from the sale of hay, timber or wood is merely an incidental by-product of the maintenance of the Water Reserve woodlands. The management of the forest, including the planting, harvest and removal of trees, is for the essential purpose of encouraging the recharge and replenishment of the under-ground wells. As far as the state program is concerned, the cutting plan for trees is not for the purpose of producing lumber commercially but with a view towards the primary use of lands as a watershed. Consequently, from any vantage point, the agricultural uses of the Water

> Reserve must be regarded as subservient to its dominant use as a public water supply. In no sense, therefore, can it be said that the East Orange Water Reserve is devoted, that is, committed, or dedicated, or set apart or appropriated, or given up wholly or chiefly to the production for sale of agricultural products of any kind within the meaning of the Farmland Assessment Act of 1964. To the contrary, it is devoted to the purpose for which it was originally acquired by East Orange, namely, for the purpose and the protection of a public water supply. (Emphasis added.).

The Superior Court's ruling in The City of East Orange case was affirmed by the Supreme Court of New Jersey in City of East Orange v. Township of Livingston, 253 A.2d 546 (N.J. 1969). This Kennecott case is totally analogous to the New Jersey City of East Orange case. The purpose of the Utah Farmland Assessment Act was exactly as stated by the New Jersey Court, i.e., to enable and encourage farmers to continue to farm their land in the face of dwindling farm income and mounting costs. If the land in this case is valued as agricultural land under the Farmland Assessment Act it will not in any way further that legislative intent. Rather, it will be a violation of that intent. How can rents received that are over 5000% higher for industrial use than for farm be construed to mean that the property leased to Hercules is "actively devoted to agriculture?" Further, the agricultural use of the land must be regarded as subservient to its dominant industrial use. In no sense can the land be said to be "devoted to," that is "committed, or dedicated, or set apart or appropriated, or given up wholly or chiefly to the production for sale of agricultural

products" of any kind within the meaning of the Farmland Assessment Act."

In addition, even though it is acknowledged that the agricultural use of Kennecott's land is active use and that it meets the minimum income requirements, that does not per se render the land as "devoted to agricultural use." In this case, the chief, dominant and primary use of the land is the Hercules industrial lease. The agricultural leases are so secondary and incidental as to only be a de minimus use of the property. The land is devoted to, dedicated to, committed to, given over to, and consecrated to the Hercules lease and not the agricultural leases.

Florida, a state with much agriculture and much real estate development has enacted a tax preference in favor of agricultural use. "The purpose of the agricultural tax preference was based upon the legislative determination that agriculture cannot reasonably be expected to withstand the tax burden of the highest and best use to which such land might be put." See Straughn v. K.K. Land Management, Inc., 326 So.2d 421, (Fla. 1976) at page 424.

In Florida, agricultural use is ascertained with reference to the amount of money that could be invested with a reasonable expectation of an annual return to the owner similar to what he would gain from other commercial enterprises with similar risks, liquidity, degree and level of management. How

does the $239,640,000. annual base rent from Hercules, Inc., for a buffer zone compare to the $4,500. annual rent received from Johnson? The Hercules industrial rent is over 5000% more per year than the Johnson agricultural rent. Could Kennecott reasonably expect to receive $239,640,000. per year from grazing or from growing wheat?

In Markham v. Nationwide Development, 349 So.2d 220 (Fla. 1977), the property owner sued to overturn the assessor's determination that its property was not agricultural land for purposes of tax preference. Under Florida law there is a statutory presumption that a sale of land for a purchase price that is three or more times its agricultural assessment creates a presumption that the land is not used primarily for bona fide agricultural purposes. In sustaining the assessor's determination to deny tax preference the District Court of Appeals observed at page 222 as follows: "Even without the statutory presumption of Section 193.461 (4) (c), the facts of this case justify the Property Appraiser's denial of Nationwide's application for agricultural classification."

* * * * *

> "Good faith commercial agricultural use of the land requires more than mere agricultural use. First National Bank of Hollywood v. Markham, 342 So.2d 1016 (Fla. 4th DCA 1977). To be a good faith commercial agricultural use, there must be at least a reasonable expectation of meeting investment lost and realizing a reasonable profit."

In North Carolina the agricultural tax preference is based upon present use. In ascertaining present use of the land, the focus is also upon the owner and its source of income. In W.R. Co. v. North Carolina Property Tax Commission, 269 S.E.2d 636 (N.C. 1980), the only sources of income the property owner had was from the sale of real estate, agricultural rents for lands and allotments, and for one year only, the sale of crops. The Court denied the preferential tax treatment because as a corporation, the owner failed to meet the definition of a qualifying corporation for "present use" valuation purposes. In looking at the source of income of the corporation, the Court concluded that the farm-related income constituted only a minor fraction of the corporation's total income and therefore denied the tax preference. Admittedly, the test in Utah focuses upon the use of the property. However, the manner in which the corporation is chartered gives insight into how it uses its property to derive its income. Kennecott is a mining company. It makes its money recovering gold, silver, copper and other minerals. It also makes money from renting the surface of mining properties such as those rented to Hercules. There is no evidence in the record to show it derives its income from agriculture. In W.R. Co., the Court reviewed statutes granting preferential treatment in 35 other states. It also reviewed several law review articles and at page 643 of the opinion made the following helpful observations:

> "It is an unfair subsidization of farmers and land speculators who are not in need of tax shelter. See Carman & Poison, Tax Shifts Occurring as a Result of Differential Assessment of Farmland: California, 1968-69, Nat'l Tax. J. 449, 455 (1970). Second, the use valuation method does not really preserve prime agricultural land near urban cities for any great length of time but instead extends development speculation for a short period of time. Henke, Supra, at 123-24. Third, the tax base is reduced placing an undue burden on those holding nonagricultural land to make up the deficit, and the tax penalties and recaptures on sale in effect benefit a land speculator who can use them to reduce his ordinary income and capitals gains from sale in the year in which he makes the sale."

How does the property owned by Kennecott and leased to Hercules promote and preserve farming. Is a commercial, long-term, industrial lease with adjustments based upon the Gross National Product Production the use that the Legislature had in mind? Absolutely not. This is abuse that does violence to the intent of the people of the State of Utah when they approved the constitutional amendment to allow preferential assessment for farmland, and contrary to the intent of the legislature when it sought to implement the constitutional provision. This Court should not perpetuate the abuse of the tax preference given to legitimate farming enterprise. The preference given Kennecott and Hercules by the Tax Commission should be reversed and set aside.

## POINT II

THE DIFFERENCE BETWEEN FULL VALUE ASSESSMENT AND THE PREFERENTIAL ASSESSMENT GIVEN TO QUALIFYING FARM LAND CONSTITUTES AN

EXEMPTION FROM TAXATION AND THE USE OF SUCH EXEMPT PROPERTY IN THIS CASE IS SUBJECT TO THE PRIVILEGE TAX.

Section 59-13-73 (now 59-4-101) Utah Code Annotated, 1953, as amended 1987, provides in part as follows: "(1) A tax is imposed on the possession or other beneficial use enjoyed by any person of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business for profit." Therefore, to be subject to the privilege tax, the following requirements are necessary:

(1) Real or personal property;

(2) Possession or other beneficial use enjoyed by any person of any real or personal property;

(3) The property is exempt for any reason;

(4) Used in connection with a business for profit.

If Kennecott's real property is assessed at its farmland value, then the difference between what it would have been assessed (full value assessment), based upon highest and best use, and the preferential assessment (farmland assessment), is an exemption from taxation. Since Hercules, Rushton and Johnson are each engaged in business for profit, the privilege tax would apply and they should be required to pay their proportionate share based upon their use of the exempted portion of Kennecott's property.

## CONCLUSION

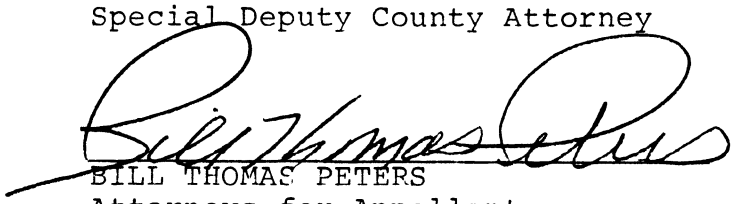
This Court has an opportunity to prevent what could

become a very abusive use of the Farmland Assessment Act. That Act was passed with a specific purpose. The purpose was to preserve the opportunity for true agricultural users who were actively engaged in agriculture to use the land for that purpose without having the tax climate impact them to the point where they could no longer afford to continue farming. The assessment as farmland constitutes a tax preference and just as the preference given to religions and charitable properties in Utah, it should be strictly construed. To expand it to include the Kennecott-Hercules industrial lease for the next 25 or 40 years would be in complete derogation of what the people voted for when they approved the amendments to Section 3 of Article XIII, of the Utah Constitution. kennecott Corporation through Hercules should not be allowed to abuse that intention.

The decision of the Tax Commission of Utah should be reversed in its entirety and Salt Lake County should be allowed to assess the subject property in the same manner as all other taxable property in Salt Lake County that is not actively devoted to agricultural use.

RESPECTFULLY SUBMITTED this 26th day of January, 1988.

DAVID E. YOCUM
Salt Lake County Attorney
BILL THOMAS PETERS
Special Deputy County Attorney



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Attorneys for Appellant

CERTIFICATE OF SERVICE

I do hereby certify that I caused to be served this 36th day of January, 1988, Four (4) copies of the foregoing Brief of Petitioner as required by Rule 26(b) of the Utah Rules of Appellate Procedure, upon the following:

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ADDENDUM 1

## ARTICLE XIII. REVENUE AND TAXATION

**Sec. 1. [Fiscal year.]**

The fiscal year shall begin on the first day of January, unless changed by the Legislature.

1896

**Sec. 2. [Tangible property to be taxed — Value ascertained — Exemption of state and municipal property — Exemption of tangible personal property held for sale or processing — Exemption of property used for irrigating land — Exemption of property used for electrical power — Remittance or abatement of taxes of poor — Exemption of residential and household property — Disabled veterans' exemption — Intangible property — Legislature to provide annual tax for state.]**

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

(a) The property of the state, school districts, and public libraries;

(b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;



(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

(d) Places of burial not held or used for private or corporate benefit; and

(e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m., held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or livestock raiser may be deemed for purposes of ad valorem property taxation to be exempted.

(5) Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall be exempted from taxation to the extent that they shall be owned and used for such purposes.

(6) Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to

the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the Legislature may prescribe.

(7) The taxes of the poor may be remitted or abated at such times and in such manner as may be provided by law.

(8) The Legislature may provide by law for the exemption from taxation. of not to exceed 45% of the fair market value of residential property as defined by law, and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family.

(9) Property owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the Legislature may provide.

(10) Intangible property may be exempted from taxation as property or it may be taxed as property in such manner and to such extent as the Legislature may provide, but if taxed as property the income therefrom shall not also be taxed. Provided that if intangible property is taxed as property the rate thereof shall not exceed five mills on each dollar of valuation

(11) The Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the Legislature shall provide for levying a tax annually, sufficient to pay the annual



interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt.

January 1, 1931
November 5, 1946
January 1, 1959
January 1, 1963
January 1, 1965
January 1, 1969
January 1, 1983

**Sec. 3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]**

(1)The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

(2)Land used for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes.

November 6, 1900
November 6, 1906
January 1, 1931
November 5, 1946
January 1, 1969
January 1, 1983

59-2-515. Rules prescribed by commission.

**59-2-501. Short title.**

This part is known as the "Farmland Assessment Act." 1987

**59-2-502. Definitions.**

As used in this part:

(1) "Land in agricultural use" means:

(a) land devoted to the raising of useful plants and animals, such as:

(i) forages and sod crops;

(ii) grains and feed crops;

(iii) livestock as defined in Subsection 59-2-102(8)(d);

(iv) trees and fruits; or

(v) vegetables, nursery, floral, and ornamental stock; or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

(2) "Roll-back" means the period preceding the withdrawal of the land from the provisions of this part or the change in use of the land, not to exceed five years, during which the land is valued, assessed, and taxed under this part. 1987

**59-2-503. Qualifications for agricultural use valuation.**

(1) For general property tax purposes, the value of land under this part is the value which the land has for agricultural use if the land:

(a) is not less than five contiguous acres in area, except where devoted to agricultural use in conjunction with other eligible acreage or as provided under Subsection (3);

(b) has a gross income from agricultural use, not including rental income, of at least $1000 per year;

(c) is actively devoted to agricultural use; and

(d) has been devoted to agricultural use for at least two successive years immediately preceding the tax year in issue.

(2) Land which (a) is subject to the privilege tax imposed by Section 59-4-101, (b) is owned by the state or any of its political subdivisions, and (c) meets the requirements of Subsection (1), is eligible for assessment based on its agricultural value.

(3) The commission may grant a waiver of the acreage limitation, upon appeal by the owner and submission of proof that 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question.

(4)(a) The commission may grant a waiver of the income limitation for the tax year in issue, upon appeal by the owner and submission of proof that the land was valued on the basis of agricultural use for at least two years immediately preceding that tax year, and that the failure to meet the income requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.

(b) As used in this section, "fault" does not include the intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the income requirement. 1987

**59-2-504. Application requirements - Change in land use or withdrawal.**

(1) The owner of land eligible for valuation under this part shall submit an application to the county assessor of the county in which the land is located. Applications shall be accepted if filed prior to March 1 of the tax year in which valuation under this part is first requested. Any application submitted after January 1 is subject to a $25 late filing fee. Filing fees shall be paid to the county treasurer at the time the application is filed. All applications filed under this subsection shall be recorded by the county recorder.

(2) Once valuation under this part has been approved, the owner is not required either to file again or give any notice to the county assessor, until a change in the land use occurs. Failure of the owner to notify the county assessor and pay the roll-back tax imposed by Section 59-2-506 within 90 days after any change in land use subjects the owner to a penalty of 100% of the roll-back tax due.

(3) Any change in land use or other withdrawal of land from the provisions of this part subjects the land to the roll-back tax whether the change or withdrawal is voluntary or involuntary, unless the change in use or other withdrawal is due to ineligibility resulting solely from amendments to this part.

(4) Land which becomes exempt from taxation under Article XIII, Sec. 2, Utah Constitution, is not considered withdrawn from this part if the land continues to be used for agricultural purposes. 1987

**59-2-505. Indicia of value for agricultural use assessment - Inclusion of fair market value on tax notice.**

If valuing land which qualifies as land actively devoted to agricultural use under the test prescribed by Subsection 59-2-503(1), and for which the owner has made a timely application for valuation, assessment, and taxation under this part for the tax year in issue, the assessor shall consider only those indicia of value which the land has for agricultural use as determined by the commission. The assessor shall also include the fair market value assessment on the tax notice. The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001. 1987

**59-2-506. Roll-back tax - Recordation - Lien - Computation of tax - Equalization, collection, and distribution.**

(1) If land which is or has been in agricultural use, and is or has been valued, assessed, and taxed under this part, is applied to a use other than agricultural or is otherwise withdrawn from the provisions of this part, it is subject to an additional tax referred to as the "roll-back tax," and the owner shall, within 90 days after the change in land use, notify the county assessor of the change in land use and pay the roll-back tax.

(2) Upon receipt of the notice, the county assessor shall cause the following statement to be recorded by the county recorder: "On ( date ) this land became subject to the roll-back tax imposed by Section 59-2-506."

(3) The roll-back tax is a lien upon the land until paid, and is due and payable at the time of the change in use.

(4) The assessor shall determine the amount of the roll-back tax by computing the difference between the tax paid while the land was valued under this part, and that which would have been paid had the property not been valued under this part. The county treasurer shall collect the roll-back tax and certify to the county recorder that the roll-back tax lien on the property has been satisfied.

(5) The assessment of the roll-back tax imposed by Subsection (1), the attachment of the these taxes, and the right of the owner interested party to review any judgmen county board of equalization affecting back tax, shall be governed by the proced vided for the assessment and taxation of erty not valued, assessed, and taxed under The roll-back tax collected shall be paid county treasury and paid by the treasur various taxing units pro rata in accordanc levies for the current year.

**59-2-507. Exclusions from agricultural use assessment - Assessment of excluded stru and land.**

(1) Land under barns, sheds, silos, crib ouses and like structures, lakes, dam streams, and irrigation ditches and like included in determining the total area of vely devoted to agricultural use. Land under the farmhouse and land used in with the farmhouse, is excluded from th nation.

(2) All structures which are located agricultural use, the farmhouse and th which the farmhouse is located, and la connection with the farmhouse, shall assessed, and taxed using the same methods, and procedures that apply to o structures and other land in the county.

**59-2-508. Application -Consent to audit review - Purchaser's or lessee's affidav**

(1) Any application for valuation, asse taxation of land in agricultural use sh form prescribed by the commission, a for the use of the applicants by the cou The application shall provide for the information pertinent to this part. A cer the owner that the facts set forth in th are true may be prescribed by the comm of a sworn statement to that effect. S certified are considered as if made unc subject to the same penalties as provide perjury.

(2) All owners applying for particip this part and all purchasers or lessees avits under Subsection (3) are consid given their consent to field audit and re the commission and the county a consent is a condition to the accep application or affidavit.

(3) Any owner of lands eligible f assessment, and taxation under this pa use of that land by, and the gross inc ations of, a purchaser or lessee, may lands by submitting, together with t under Subsection (1), an affidavit fro aser or lessee certifying those facts use of the land and the purchaser's o income which would be necessary fo of those lands under this part.

**59-2-509. Change of ownership.**

Continuance of valuation, assessm tion under this part depends upon the land in agricultural use and comp other requirements of this part, and tinuance in the same owner of titl Liability to the roll-back tax att change in use or other withdrawa occurs, but not when a change in ov title takes place, if the new owner nues the land in agricultural use un

lessee obtains 80% or more of his income from agricultural products on an area of less than five contiguous acres.

(3) The tax commission may grant a waiver of the income limitation for the tax year in issue, upon appeal by the owner and submission of proof that the land has been valued on the basis of agricultural use for at least two years immediately preceding that tax year, and that the failure to meet the income requirements for that tax year was due to no fault or act of the owner or a purchaser or lessee, whether that act is one of omission or commission. "Fault" shall not be construed to include the intentional planting of crops or trees which because of the maturation period of such crops or trees prevent the owner, purchaser, or lessee from achieving the income limitation.

**History:** C. 1953, 59-5-87, enacted by L. 1969, ch. 180, § 2; L. 1973, ch. 137, § 1; 1975, ch. 174, § 1.

**Compiler's Notes.**

The 1975 amendment inserted the subsection (1) designation; substituted "gross income, not including rental income, of $1000 per year" in subsec. (1) for "gross income of $250 per year"; substituted "at least two successive years" for "at least five successive years" in subsec. (1); redesignated former subd. (a) as subsec. (2); inserted "or a purchaser or lessee" in subsec. (2); added subsec. (3); and made minor changes in phraseology.

**59-5-89. Land actively devoted to agricultural use — Additional requirements — Application for assessment under act — Change in land use — Land used for religious or charitable purposes.** Land which is actively devoted to agricultural use is eligible for valuation, assessment and taxation each year it meets the following qualifications:

(1) It has been so devoted for at least the two successive years immediately preceding the tax year for which valuation under this act is requested;

(2) The area of land is not less than five contiguous acres when measured in accordance with the provisions of section 59-5-94, except where devoted to agricultural use in conjunction with other eligible acreage, and when the gross sales of agricultural products produced thereon together with any payments received under a crop-land retirement program have averaged at least $1000 per year, not including rental income, during the two year period immediately preceding the tax year in issue; and

(3) (a) Application by the owner of the land for valuation hereunder is submitted on or before January 1 of the tax year to the county assessor in which the land is situated on the form prescribed by the state tax commission. The county assessor shall continue to accept applications filed within 60 days after January 1 upon payment of a late filing fee in the amount of $25, which shall be paid to the county treasurer.

(b) The county assessor shall have all applications filed under subsection (a) recorded by the county recorder. All necessary filing fees shall be paid by the owner at the time his application is filed. Whenever land, which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, the owner shall, within 90 days thereafter, notify the county assessor and pay the roll-back tax imposed by section 59-5-91. Upon receipt of notice, unless payment of the roll-back tax accompanies that notice, the county assessor shall cause the following statement to be recorded by the county recorder: "On the _____day of _____, 19____, this land became subject to the roll-back tax imposed by section 59-5-91."

(c) Notwithstanding the provisions of (3)(a) and (b) of this section, whenever the owner of land has filed or becomes eligible for valuation under this act, he need not file again or give any notice to the county assessor until a change in the land use occurs. Failure of the owner to notify the county assessor and pay the roll-back tax imposed by section 59-5-91, within 90 days after any change in land

use, will subject the owner to a penalty of 100% of the computed roll-back tax due.

(d) Any change in land use or other withdrawal of land from the provisions of this act shall be subject to the provisions of this section whether the change or withdrawal is voluntary or involuntary, unless the change in use is due to ineligibility resulting solely from amendments to this act.

(e) Land which becomes exempt from taxation as provided in section 59-2-30 shall not be considered withdrawn from the provisions of this act as long as the land continues to be used for agricultural purposes.

**History:** C. 1953, 59-5-89, enacted by L. 1969, ch. 180, § 4; L. 1973, ch. 137, § 2; 1975, ch. 174, § 2; 1982, ch. 68, § 1.

**Compiler's Notes.**

The 1975 amendment reduced the land use requirement in subd. (1) from five to two successive years; inserted "except where devoted to agricultural use in conjunction with other eligible acreage" in subd. (2); substituted "averaged at least $1000 per year, not including rental income, during the two-year period" in subd. (2) for "averaged at least $250 per year during the five-year period"; substituted "on or before January 1 of the tax year" for "on or before October 1 of the year immediately preceding the tax year" in the first sentence of subd. (3)(a) and "January 1" for "October 1" in the second sentence; inserted "All necessary filing fees shall be paid by the owner at the time his application is filed" in subd. (3)(b); substituted "the owner shall, within ninety days thereafter, notify the county assessor and pay the roll-back tax imposed by section 59-5-91. Upon receipt of notice, unless payment of the roll-back tax accompanies that notice" in subd. (3)(b) for "the owner shall notify the county assessor"; inserted "and pay the roll-back tax imposed by section 59-5-91, within ninety days" in subd. (3)(c); added subd. (3)(d); and made minor changes in phraseology.

The 1982 amendment deleted "as herein provided" after "taxation" in the first sentence; added subd. (3)(e); and made minor changes in phraseology and style.

**59-5-90. "Indicia of value" for agricultural use determined by tax commission.** The assessor in valuing land which qualifies as land actively devoted to agricultural use under the test prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue, shall consider only those indicia of value which such land has for agricultural use as determined by the state tax commission. The county board of equalization shall review the assessments each year as provided in section 59-7-1.

**History:** C. 1953, 59-5-90, enacted by L. 1969, ch. 180, § 5; L. 1975, ch. 174, § 3.

**Compiler's Notes.**

The 1975 amendment made no change in this section.

**59-5-92. "Roll-back tax" — Lien — Right to review judgment — Procedure.** The assessment of the roll-back tax imposed by section 59-5-91, the attachment of the lien for such taxes, and the right of the owner or other interested party to review any judgment of the county board of equalization affecting such roll-back tax, shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed and taxed under the provisions of this act. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year.

**History:** C. 1953, 59-5-92, enacted by L. 1969, ch. 180, § 7; L. 1975, ch. 174, § 4.

**Compiler's Notes.**

The 1975 amendment made no change in this section.

**59-5-95. Application forms — Certification by landowner — Consent to audit and review — Purchaser's or lessee's affidavit.** (1) Application for valuation, assessment and taxation of land in agricultural use under this act shall be

## Chapter 4. Privilege Tax



### 59-4-101. Tax basis - Exceptions - Assessment and collection.

(1) A tax is imposed on the possession or other beneficial use enjoyed by any person of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business conducted for profit.

(2) The tax imposed under this chapter is the same amount that the ad valorem property tax would be if the possessor or user were the owner of the property. The amount of any payments which are made in lieu of taxes is credited against the tax imposed on the beneficial use of propety owned by the federal government.

(3) No tax is imposed under this chapter on the following:

(a) the use of property which is a concession in, or relative to, the use of a public airport, park, fairground, or similar property which is available as a matter of right to the use of the general public;

(b) the use or possession of property by a religious, educational, or charitable organization;

(c) the use or possession of property where the proceeds inure to the benefit of a religious, educational, or charitable organization and not to the benefit of any other person;

(d) the possession or other beneficial use of public land occupied under the terms of a grazing lease or permit issued by the United States or this state; or

(e) the use or possession of any lease, permit, or easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. Every lessee, permittee, or other holder of a right to remove or extract the mineral covered by the holder's lease, right, permit, or easement except from brines of the Great Salt Lake, is considered to be in possession of the premises, notwithstanding the fact that other parties may have a similar right to remove or extract another mineral from the same lands or estates.

(4) A tax imposed under this chapter is assessed to the possessors or users of the property on the same forms, and collected and distributed at the same time and in the same manner, as taxes assessed owners, possessors, or other claimants of property which is subject to ad valorem property taxation. The tax is not a lien against the property, and no tax-exempt property may be attached, encumbered, sold, or otherwise affected for the collection of the tax. 1987

### 59-4-102. Failure to pay tax - Remedies of county.

A tax due and unpaid under this chapter constitutes a debt due the county for and on behalf of the various taxing units concerned with the tax. If the tax imposed by this chapter or any portion of the tax is not paid at the time the tax becomes delinquent, the county auditor may issue a warrant in the name of the county directed to the clerk of the district court for that county. The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest, and other costs for which the warrant is issued and the date when the warrant is filed. The warrant so docketed has the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk, and the county has the same remedies against the possessor or user as any other judgment creditor. 1987

## Chapter 5. Mining Occupation Tax



### 59-5-101. Definitions.

As used in this chapter:

(1) "Person" includes any individual, partnership, company, joint stock company, corporation, association, or any group or combination acting as a unit, and the plural as well as the single number.

(2) "Metalliferous minerals" is defined in Subsection 59-2-102(4).

(3) "Nonmetalliferous minerals" is defined in Subsection 59-2-102(7).

(4) "Minerals" means either metalliferous or nonmetalliferous minerals, or both.

(5) "Mine" is defined in Subsection 59-2-102(5).

(6) "Mining" is defined in Subsection 59-2-102(6).

(7) "Solid hydrocarbons" includes coal, gilsonite, ozocerite, elaterite, oil shale, tar sands, and all other hydrocarbon substances that occur naturally in solid form.

(8) "Well or wells" means any well or wells or other extractive means from which oil, gas, or other hydrocarbon substances (except solid hydrocarbons) are produced or extracted, located within an oil field or gas field as defined in Subsection (9), and operated by one person.

(9) "Oil field," or "gas field," means any field in which oil, gas, or other hydrocarbon substances (except solid hydrocarbons) are produced from one or more wells within an oil or gas structure, whether

three years. The current judicial council shall continue in existence with full authority until the election of the members of the council as provided in this section

(2) The appellate court nominating commission established by Subsection 20-1-7 2(1) may not be convened initially prior to July 1, 1986 nor later than September 1, 1986

(3) The provisions in this act for court jurisdictions may not be implemented until January 1, 1987 Courts then continue to have jurisdiction to dispose of any cases pending on that date

(4)(a) Any justice or judge of a court of record, whose election to office was effective on or before July 1, 1985, shall hold the office for the remainder of the term to which he was elected. The justice or judge is subject to an unopposed retention election as provided by law at the general election immediately preceding the expiration of the respective term of office

(b) Any justice or judge of a court of record whose appointment to office was effective on or before July 1, 1985, is subject to an unopposed retention election as provided by law at the first general election held more than three years after the date of the appointment

(c) Any justice or judge of a court of record whose appointment to office was effective after July 1, 1985, is subject to an unopposed retention election as provided by law at the first general election held more than three years after the date of the appointment 1986

## Chapter 2. Supreme Court



**78-2-1. Number of justices - Term - Retirement - Chief justice and associate chief justice - Selection and functions.**

(1) The Supreme Court consists of five justices

(2) A justice of the Supreme Court shall be appointed initially to serve until the first general election held more than three years after the effective date of the appointment Thereafter, the term of office of a justice of the Supreme Court is ten years and until his successor is appointed and approved in accordance with Section 20-1-7.1.

(3) The justices of the Supreme Court shall elect a chief justice from among the members of the court by a majority vote of all justices. The term of the office of chief justice is four years The chief justice may not serve successive terms. The chief justice may resign from the office of chief justice without resigning from the Supreme Court. The chief justice may be removed from the office of chief justice by a majority vote of all justices of the Supreme Court

(4) If the justices are unable to elect a chief justice within 30 days of a vacancy in that office, the associate chief justice shall act as chief justice until a chief justice is elected under this section If the associate chief justice is unable or unwilling to act as chief justice, the most senior justice shall act as chief justice until a chief justice is elected under this section.

(5) In addition to the chief justice's duties as a member of the Supreme Court, the chief justice has additional duties as provided by law

(6) There is created the office of associate chief justice. The term of office of the associate chief justice is two years. The associate chief justice may serve in that office no more than two successive terms The associate chief justice shall be elected by a majority vote of the members of the Supreme Court and shall be allocated duties as the chief justice decides. If the chief justice is absent or otherwise unable to serve, the associate chief justice shall serve as chief justice. The chief justice, where not inconsistent with law, may delegate responsibilities to the associate chief justice 1986

**78-2-1.5. Repealed.** 1971

**78-2-1.6. Repealed.** 1981

**78-2-2. (Effective through December 31, 1987). Supreme Court jurisdiction.**

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals,

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in cases originating in:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the Board of State Lands,

(iv) the Board of Oil, Gas, and Mining, and

(v) the state engineer;

(f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution,

(g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(h) appeals from the district court involving a conviction of a first degree or capital felony, and

(i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:

(a) first degree and capital felony convictions;

(b) election and voting contests,
(c) reapportionment of election districts,
(d) retention or removal of public officers,
(e) general water adjudication,
(f) taxation and revenue, and
(g) those matters described in Subsection (3)(a) through (h)

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b) 1986

**78-2-2. (Effective January 1, 1988). Supreme Court jurisdiction.**

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over
(a) a judgment of the Court of Appeals,
(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals,
(c) discipline of lawyers,
(d) final orders of the Judicial Conduct Commission,
(e) final orders and decrees in cases originating in
(i) the Public Service Commission,
(ii) the State Tax Commission,
(iii) the Board of State Lands,
(iv) the Board of Oil, Gas, and Mining, and
(v) the state engineer,
(f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution,
(g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony,
(h) appeals from the district court involving a conviction of a first degree or capital felony, and
(i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction

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(d) retention or removal of public officers,
(e) general water adjudication,
(f) taxation and revenue, and
(g) those matters described in Subsection (3)(a) through (h)

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b)

(6) The Supreme Court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings 1987

**78-2-3. Repealed.** 1986

**78-2-4. Supreme Court - Rulemaking, judges pro tempore, and practice of law.**

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law 1986

**78-2-5. Court always open for transaction of business.**

The Supreme Court shall always be open for the transaction of business Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time 1953

**78-2-6. Appellate court administrator.**

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court 1986

**78-2-7 through 78-2-10. Repealed.** 1986

**78-2-11. Reporter - Deputy clerks - Assistants.**

The Supreme Court shall appoint a reporter of its decisions who shall hold office during the pleasure of the court, and may appoint, remove at pleasure, and fix the compensation for such deputy clerks and other assistants as may be necessary for the transaction of the business of the court 1953

**78-2-12. Postage and office supplies.**

Stationery, postage and supplies necessary for the transaction of the business of the Supreme Court, including the printing of the court docket, shall be furnished by the purchasing department or officer of the state, on requisition therefor made through the clerk 1953

**78-2-13. Bailiffs and assistant librarian.**

The court is hereby authorized to appoint and remove at pleasure the necessary bailiffs to attend the court, and to perform such other duties and execute such orders as may be directed or made by the court The court may also appoint and remove at pleasure an assistant librarian, who shall perform such duties as the court may order or direct 1953

**78-2-14. Sheriffs to attend and serve.**

The court may at any time require the attendance and services of any sheriff in the state 1953

## Chapter 2a. Court of Appeals

ADDENDUM 2

EXHIBIT "A"

BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|---|---|---|
| THOMAS E. & MARY LU E. JUDD, Petitioner, | ) | DECISION OF INFORMAL HEARING |
| COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent. | ) | Appeal No. 85-1738 thru 85-1750 Serial No. See attachment |

STATEMENT OF CASE

This matter was appealed from the Salt Lake County Board of Equalization's determination not to place the subject property on greenbelt status. A hearing was held on the matter on March 26, 1986 before the Utah State Tax Commission. James E. Harward, Hearing Officer, heard the matter for the Utah State Tax Commission. Thomas E. Judd was present, and the Salt Lake County Board of Equalization was represented by Bill Thomas Peters, Jona Schomburg, Craig Jacobsen and Colleen Jacobsen. Also present on behalf of the Respondent was Bob Yates.

Petitioner presented evidence that lots 4 through 16 of the Vista West Subdivision, although platted, are still being used as farm ground. The lots approximately 4 acres, are farmed in conjunction with a larger 19 acre piece which lies to the east of the subject property. The property brings in approximately $300.00 an acre per year based on the hay and grain produced from the property. The Petitioner asserts that where the use of the property has not changed even though it has, in fact, been subdivided or platted for subdivision, that the roll back taxes should not be assessed, nor should the property be taken off greenbelt status.

The property is improved with curb, gutter, streets, telephone service, sewer, and electricity. The back lot lines are presently established by the telephone company's service boxes and stubbed in electrical wiring. All of the utilities are underground.

During the construction of the improvements, the contractor deposited debris and other property on the subject lots making it difficult to farm the property. Thus, the property was not farmed for approximately 2 years. A claim was filed for destruction to the crops on the property, or crops which would have been grown had the debris, etc. had not been on the property.

The Respondent presented evidence that the greenbelt status of the property no longer applies, and the roll back

taxes should be imposed. The basis for their conclusions were that the curb and gutter had been in place and all improvements had been put in. In addition, the lots in their present condition are weed infested, and have not been cultivated. In addition to this fact, it would also be very difficult to get the machinery into the property to do any cultivating due to the stubbed in electrical work and the telphone lines along the back lot line of the property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission makes the following determinations:

1. The subject property has been severed from the larger 19 acre piece to the east.

2. The severance was accomplished by the platting of the property, the construction and installation of the utilities, curb, street, and gutter etc.

3. Once property has been severed, subdivided, and improvements placed thereon, the greenbelt status should be removed and roll back taxes assessed according to statute because the primary purpose of the ground is no longer for agricultural use, but for resale. The current economic conditions, the inability to sell lots, and continued limited farming activity on the property are incidental to the primary purpose of the marketing and sales of the subdivided, platted, and improved lots.

## DECISION AND ORDER

Therefore, it is the Decision and Order of the Tax Commission that the Petitioner's petition be denied and that the actions of the Salt Lake County Assessor be affirmed.

DATED this 2 day of April, 1986.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

ABSENT

Mark K Buchi
Chairman

R. H. Hansen
Commissioner

Roger O Tew
Commissioner

Joe B. Pacheco
Commissioner

JEH/lgh/2329w